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No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

LESTER V. JONES, PETITIONER

v.

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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61 pp

QUESTIONS PRESENTED

Maryland Rules governing attorney discipline failed to meet the Federal Constitutional guarantees of equal protection and due process by the lower Courts recurring pattern of completely disregarding the Maryland Rules of Civil Procedure relating to laches, limitations, equity and proof requirements in addition to not mandating independent fact- finding hearings at all stages of licensure suspension or revocation proceedings.

Your Petitioner has been denied the same basic rights that any other litigant in the Maryland court system is entitled to receive and expect in the Rules governing civil proceedings. This has resulted in not only his being suspended and disbarred by the Maryland courts, but also having his privileges taken from the U.S. District Court of Maryland and U.S. Supreme Court.

In this case, the failure of the lower Courts and the Maryland Statutes governing attorney discipline (Md. BV Rules, supra), to mandate an independent fact finding hearing before the suspension or revocation of an attorney's law license (BV 9), is both unconstitutional on its face and as applied to your Petitioner. He was suspended without the benefit of such a hearing before an independent review by the Maryland Court of Appeals. (App.C)

Petitioner Lester V. Jones', license to practice law, is a protected property right under the Fifth and Sixth Amendment of the Federal Constitution's due process and equal protection clauses. He was suspended in Maryland without due process or equal protection guaranteed in attorney discipline licensure proceedings. The Petition for Suspension (App. C); R.Ex.Bk.Sect.AA. Interim Pleadings-Petitioner Exhibits, 1. Petition to Suspend, pg 1-3) failed to set forth the specific basis for the suspension and its relationship to any violations of Professional Responsibility under Maryland Rule 1230 as well as the Md. BV Rules governing Discipline and Inactive Status of Attorneys and as Amended. (R.Ex.Bk., GG. Md Code 2, pg 60-64; KK. BV Rules, generally, pg 124-168).

Many Federal and State Courts of last resort have, as a matter of federal constitutional law, required that any attorney discipline proceedings designed to interfere with the law license privilege, via suspension or revocation of the license, require independent evidentiary fact finding hearings before the ultimate review independently on the Record below by the highest court of last resort.

The first question presented is did the Maryland Court of Appeals violate the Petitioner's Federal Constitutional due process and equal protection guarantees that protect his law license through the BV Rules and Courts failure to mandate an independent fact-finding hearing before the Appellate Court reviews the Record as a prerequisite to determining discipline as in the Order of indefinite suspension from the practice of law on February 11, 1993, requires any past or present discipline to be vacated.

The second question presented addresses whether the decision below in conflicting with numerous State and Federal Courts of last resort decisions that construe Federal Constitutional rights of due process and equal protection generally applies to Rules and Regulations governing attorney disciplinary proceedings.

Maryland conflicts with her sister States by construing the Federal Constitutional requirements of due process and equal protection are not mandatory in attorney disciplinary hearings involving licensure suspension and/or revocation. The Constitutional protections also were not applied by the lower Courts to the Petitioner's second level disciplinary proceedings. These were a result of the Petition and Amended Petition for Discipline, filed by Bar Counsel in November 1995 and early 1996. (App.D). This ultimately led to disbarment on May 17, 1996, by the Court of Appeals after an independent evidentiary hearing in the lower Court and its subsequent review by the Court of Appeals of the lower court. (App.A; App.B, infra).

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The Maryland Attorney Disciplinary BV Rules and Procedures are unconstitutional on their face and as applied to the Petitioner denying due process and equal protection.

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OPINION BELOW

The Order of the Court of Appeals for the indefinite suspension of February 11, 1993, (App.C, infra, 17a), and Opinion and Order of disbarment dated May 17, 1996, are unreported. (App.A, infra, 1a-16a).

JURISDICTION

The Judgement of the Court of Appeals of Maryland was entered by order on May 17, 1996. Jurisdiction is invoked under 28 USC, Section 1257(a). Lester V. Jones respectively petitions for a Writ of Certiorari to review the Judgement of the Court of Appeals of Maryland in this case.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:..."no person shall be...deprived of life, liberty or property without due process of law;"... .

The Fourteenth Amendment, Section 1, to the United States Constitution provides in pertinent part:

> ..."no State shall make or enforce any law that shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."...

STATEMENT

Lester V. Jones (age 62), a practicing lawyer for over thirty (30) years has been devoted to his family, community and legal profession. In over thirty (30) years of practice, he has been a mentor to many new attorneys. He has never been sanctioned by the Bar. (App. B,infra, 14a-16a).

Rule BV 9. below by containing language which makes a fact finding hearing by an independent tribunal optional with the word ...'may'...rather than the mandatory language of 'shall' makes BV 9 unconstitutional both on its face and as applied to your Petitioner.

However, all that ended on February 11, 1993, when

he was indefinitely suspended by the Court of Appeals acting as Court of Record and Review without the benefit of an independent evidentiary hearing. Maryland Rule BV.9. Charges, (b) Where Filed and Heard., and (c) Form., states in pertinent part:

> ..."(b). Charges against an attorney shall be filed on behalf of the Commission in the Court of Appeals. The Court of Appeals by Order, may direct that the charges be transmitted to and heard in any court and shall designate the Judge or Judges to hear the charges and the Clerk responsible for maintaining the Record in the proceeding"...
> ..."(c). The charges shall be in writing and shall be sufficiently clear and specific reasonable to inform the attorney proceeded against of any misconduct charge and the basis of any allegation that he is incompetent"...

Bar Counsel placed charges against him upon his being convicted by a jury in April 1992, (the jury also found him not guilty on 2 Counts of false declaration), in the U.S. District Court of Maryland, United States v. Lester V. Jones, MJG-90-0405 for tax evasion along with aiding and abetting pursuant to 26 USC 7201 and 18 USC 2, respectively. The events occurred during the tax years 1983-84, upon which an indictment was issued in 1990, followed by a superseding indictment in March 1991. (The Petitioner's first trial presided over by Judge Garbis ended in a mistrial). (R.Ex.Bk. Supp. and R.Excpt.Ex.Bk.)

The undisputed evidence at both trials and in both phases of the disciplinary proceedings before the Court of Appeals and the Trial Court fact finding hearing respectively, concluded the following: Lester V. Jones never prepared his taxes but utilized the services of a tax preparer which included the 1983-84 tax returns and amended returns filed in October 1986. All additional taxes, interest and penalties were paid at that time. (T.210). There was no further money

owed by the Petitioner. (T.67-68, 233-235).

On December 24, 1986, he received written notification that the IRS was commencing a criminal tax investigation for the same tax years which had been satisfied through payment months before.

There was and still is money of the Petitioner's being held in an IRS suspense account of at least $40,000.00 which was available pre-indictment and has not been refunded or credited to the Petitioner. (T-203). A timely Appeal to the Fourth Circuit was filed along with bail. (T.124). Bail was denied per 18 USC 3143, infra, not in affect in 1983-86). McManus, infra. Ultimately, the Appeal filed to the Fourth Circuit and Certiorari were denied.

Bail having been denied and your Petitioner sentenced to prison notwithstanding the pending Appeal, Bar Counsel filed the Petition to Suspend From The Practice Of Law, (App.D, infra, 18a-19a) based solely on the conviction under Rule BV 16. Suspension Upon Conviction of Certain Crimes which states in pertinent part:

> ..."(a) filing Charges. 1. Application. This Rule shall apply to convictions in any one or more of the following categories: (i) in any Maryland court of a felony, (ii) in any Federal Court of a felony, unless the same crime also is a crime under Maryland Law and is not a felony, ...and (iv) in any judicial tribunal of any other crime punishable by imprisonment for three years or more...(b) Order. The Court of Appeals shall issue an order to show cause why the attorney should not be suspended from the practice of law until further order of the Court of Appeals. Upon consideration of the charges and the answer to the order to show cause, the Court of Appeals may enter an order, effective immediately, suspending the attorney from the practice of law until its further order. The provisions of Rule BV 13. apply to the suspension...(c)

> Further Proceedings. In any case in which the Court of Appeals has entered an order suspending an attorney until its further order pursuant to this Rule, further proceedings on the charges shall be conducted pursuant to Rules BV 9. Charges, BV 10. Hearings and BV 11. Disposition of Charges, to determine whether the crime warrants discipline and if so, the extent thereof. If the attorney has appealed from his conviction, the hearing shall be delayed until completion of the Appellate process...if after the completion of the Appellate process, the conviction has not been reversed,...the hearing shall be held within a reasonable time after the mandate is issued...however, if the attorney is incarcerated following termination of the Appellate process, or expiration for the time of an Appeal (if no Appeal has been taken), the hearing shall be set within a reasonable time following termination of incarceration unless the attorney (i) requests an earlier hearing; and (ii) makes all arrangements including financial arrangements for his presence at the earlier hearing at the date set by the court"...

It took over two years from the point of suspension without a merits hearing to his receiving a merits hearing on the Petition for Disciplinary Action in the Spring 1995. Two years of being suspended without a fact finding hearing was clearly not a "reasonable time" as contemplated by the Rules. The time delay in and of itself, when coupled with the other circumstances, should have mandated the doctrine of estoppel prohibiting any further disciplinary action with automatic reinstatement for your Petitioner.

There were no specific allegations of misconduct cited nor was or has there ever been an affirmative proof linkage by Bar Counsel between BV 16. and BV 10.(d),(e)(1),(2)

which sets forth requirements for out of State Court convictions per Maryland Rule 1230 misconduct Canons in effect in 1983-1986. (App.A, infra, 2a-3a).

BV 10. Hearings. states in pertinent part:

..."(d) Hearings. Conducted as civil case. The hearing of charges is governed by the same Rules of Law, evidence and procedure as are applicable to the trial of civil proceedings in equity. Factual findings shall be supported by clear and convincing evidence.

..."(e). Conviction of Crime-Adjudication of Misconduct. 1. Proof of Guilt...in a hearing of charges pursuant to this Rule, a final judgment by a judicial tribunal in another proceeding convicting an attorney of a crime shall be conclusive proof of the guilt of the attorney of that crime... A final adjudication in a disciplinary proceeding by a judicial tribunal or a disciplinary agency appointed by or acting at a direction of a judicial tribunal that an attorney has been guilty of misconduct is conclusive proof of the misconduct in the hearing of charges pursuant to this Rule.

2. Additional Evidence..."Nor does it preclude the attorney from introducing evidence or otherwise showing cause why he should not be disciplined."

The Petitioner was Ordered and did Show Cause to the Court of Appeals why suspension should be denied. This Court then acted as both the Court of Record sans evidentiary hearing (Memoranda, Exhibits, Arguments) and Reviewing Court. Clearly, this was against what was contemplated by the Rules. Rule BV 11.(4). Review by the Court of Appeals and (5). Decision of Court of Appeals which read in pertinent part:

...4. "Review by Court of Appeals. The Court of Appeals may order (i) disbarment,

(ii) suspension, (iii) reprimand, (iv) placing attorney on inactive status, (v) dismissal of charges or may remand the case for further proceedings."...

...5." Decision of the Court of Appeals. The decision of the Court of Appeals is final."...

The Court unconstitutionally suspended the Petitioner indefinitely from the practice of law on February 11, 1993. Your Petitioner requested Injunctive Relief but was denied by the trial court. (1T.15, 29-33; R.Pldg.Bk.#4-Request for Temporary and Injunctive Relief, pg 1-20;R.Excpt.Bk. at 4). This has caused physical and emotional difficulty as well as economic havoc for the Petitioner and his family. (App.B, infra,15a-16a); (T.87-89,132). This suspension continued until his disbarment was ordered by the Court of Appeals. Rule BV 13. Effect of Discipline, Inactive Status and Resignation, which states in BV 13. (2) Effect. The attorney may not practice after an order disbarring the attorney...or, during the period the attorney by Order is suspended... (App.C, infra, 17a).

In the Spring 1995, based on the Respondent's Petition and Amended Petition For Disciplinary Action, (App.E, infra, 21a-22a,25a-27a), the lower court held proceedings including a half day Motions Hearing. (R.Pldg.Bk.) and a three day Merits hearing in the trial court, Judge Lawrence Daniels presiding. The Petitioner's Motions were denied. (M.DT.; 1T; T).

The lower trial court in November 1995, issued its conclusion of fact and findings of law approximately 10 months after the hearing. (App. B, infra, 11a-15a).

Judge Daniels found that Bar Counsel improperly charged the Petitioner under 8.4, Misconduct (App.B, infra, 12a). He also concluded misconduct had occurred however, there were overwhelming compelling, mitigating and extenuating circumstances at the time. (id.,13a-15a).

Timely Exceptions were taken from the decision as required by the Rules (BV 11.), on both substantive issues and the Constitutional issues of due process and equal

protection raised throughout the proceedings commencing with the Petition to Suspend.

The Court of Appeals without regard to stare decisis, the improvidently granted suspension or the unique circumstances of your Petitioner ordered his disbarment. (App.A, infra). The Opinion and Order failed to address the issues which are the subject of this Petition for Certiorari which has been timely filed by the Petitioner.

The decision below conflicts with many other State and Federal Courts of last resort. In fact, had the Petitioner's case arisen in Ohio or the States within the other Fourth, Fifth or Sixth Circuit jurisdictions, he would have at the very least, had an independent evidentiary hearing before his suspension in 1993, assuming a proper petition would have been filed before the courts. It is also likely that sanctions based on the same pleadings filed by Bar Counsel in this case being filed in those courts, would have resulted in a favorable outcome to the Petitioner.

There is little doubt with the gravamen of the economic, emotional and health consequences to the Petitioner at this stage in his life, the Court should grant certiorari to resolve this sharply conflicting interpretation of the Constitution that has been adopted by the Courts below and by other courts.

REASONS FOR GRANTING CERTIORARI

Lester V. Jones fell victim to a system that allowed his Federal Constitutionally protected property right, his law license to be suspended without the Petition to Suspend, meeting constitutional requirements mandating an independent tribunal holding an evidentiary fact finding hearing before the final de novo record review of the tribunal proceedings by the Court of Appeals of Maryland. (R.Ex.Bk.KK BV Rules, Subtitle BV. Generally, Discipline and Inactive Status of Attorneys and as Amended. pg 124-168); See also, id.BV 9. Charges, pg 145-146; id.BV 10. Hearings pg 149-150; id.BV 16.Suspension Upon Conviction of Certain Crimes, pg 164-165).

There has never been a case in Maryland of attorney

disciplinary proceedings similar to that of your Petitioner on the critical facts and disregard for his Constitutional rights where a decade has passed before sanctions. He finds himself being convicted in the courts for taxes that he paid and punished by the Bar over a decade after the alleged tax evasion took place.

Historically, attorney discipline has always been viewed not to punish the attorney but to protect the public. (App. A.). To be logically consistent with that philosophy, timeliness of the discipline to the misconduct is a must. However, in this case it was ignored. AGC v. Howard, 282 Md. 515, 523 385 A.2d 1191 (1978), when the Court in pertinent part stated:

> ..."when discipline is not on the heels of the act, it would not serve the underlying purpose of the proceedings to disbar and/or suspend an attorney"... (at 523). (1T.17-18).

In Collins and its progeny, the Court suggested that should a respondent be able to show prejudice in bringing an action (certainly a decade would qualify in that category) against an attorney, limitations, equity and/or laches could estop and otherwise bar the disciplinary proceedings. This should have happened in this case. Anne Arundel County Bar Assoc. v. Collins, 272 Md. 578, 584; 325 A.2d 724 (1974). The Court rather than viewing this case on the individual merits, AGC v. Myers, infra, elected to deny the Motion to Dismiss and For Injunctive And Other Relief. (R.Excpt.Bk. at 6); (1T.16-22, 26-28, 46,71; T.171; id. 29-33, 51, 54-56). Bar Counsel's BV 16. proceedings (which could have been filed with a waiver clause electing not to prosecute, or alternatively, a Petitioner filed to waive prosecution due to the lack of proximity from event to discipline was never considered an option), only serve to punish the Defendant as the public is not served due to the decade passing before the sanctions. Howard, supra (R.Excpt.Bk. pg 3-6). Bar disciplinary proceedings were instituted against Lester Jones as a result of his Federal Court jury conviction for tax evasion and aiding and abetting for

tax years 1983 and 1984.

Notwithstanding the fact that as a result of being selected by the IRS for a random civil audit for 1983 and 1984, all taxes, interest and penalties were fully paid in resolving the 1984-84 tax returns through amended returns for those years. (T.179-181, 184-185, 201-202). These returns prior to filing, were reviewed at various stages by the IRS agent conducting the audit with the full cooperation of the Petitioner, his staff and tax preparer. (T. 90-93; 181,184). He was advised that no further monies were owed the Internal Revenue Service by the agent. (R.Excpt.Bk. pg 18-23, 34; T.201-210, T.212-213, 218-219).

An irony of this Federal IRS tax statute, 26 USC 7201, is that an individual can be fully paid and as in this case can challenge the IRS for monies that they have been holding in a suspense account prior to the commencement of the criminal investigation resulting in the indictments of 1990-1991. (id.34) T.102-105, 203. Your Petitioner was aided and abetted in the preparation of the corrective and amended returns filed in 1986 for tax years of 1983-1984 for tax returns.

The first trial was declared a mistrial because of the jury's inability to reach a verdict. U.S. District Court Judge Garbis, MJG 90-0405, in a Post Trial Memorandum and Order (1991) paraphrasing the Court in pertinent part stated:

> ..."Lester Jones is and continues to be a productive and functional member of society."
> ..."He was neither a danger to the public nor was it likely, even if convicted of tax evasion, that he would commit this type of offense again"...
> Judge Garbis went on to state:
> ..."the Government has disavowed the tax preparer, their chief witness, due to his lack of credibility and competence"... . (R.Excpt.Bk. at 30; R.Ex.Bk.DD,Memo. and Order, Judge Garbis, pg 52-53).
> In the second jury trial, Judge Maletz presiding, the

Petitioner was convicted on two counts -- Tax Evasion, 26 USC 7201, and 18 USC 2, Principals. He was found not guilty on 26 USC 7206, Fraud and False Statements and 18 USC 2 for the 1986 amended tax return. (R.Excpt.Bk. at 24).

The clear signal by the verdict was that the jury either ignored the fact that he was fully paid in his taxes before any indictment or investigation, or it did not understand that by finding him not guilty on the amended tax returns charges coupled with his not owing the IRS additional money, he eliminated criminal intent. This jury decision was an unfortunate compromise verdict.

In short, he was convicted because he was a lawyer and on the incompetence of his tax preparer, not because the IRS was owed any money. He was prosecuted because the statute allows for criminal prosecution even though no money is owed by a taxpayer.

Lester Jones filed his timely Appeal (id.;T.124) to the Fourth Circuit along with bail pending Appeal. (id.EE. pg 55-56). Judge Maletz in denying bail, failed to utilize the standard in effect in 1983-1984, which placed attorneys on bail pending Appeal because of the irreparable harm done if bail was denied and the Appeal was successful. United States v. McManus, 651 F.Supp. 382 (D.Md.), aff'd. 826 F.2d 1061 (4th Cir. 1987). Rather, the Court utilized the amended version to 18 USC Section 3143, (1988), governing Bail Pending Sentence or Appeal in which bail should be granted only when there is a substantial likelihood that the Appeal will be successful. (R.Ex.Bk.CC.2. pg 44-48).

As a Court of independent review, the Appeals Court in property rights cases involving licensure issues should have required that due process and equal protection demand a separate tribunal hearing rather than act as the tribunal and reviewing court issuing the decision to suspend. (BV 9.; M.DT. 29).

The Federal Constitutional deprivations continued two years later when the lower courts, once again, upheld the Motion for Discipline filed by Bar Counsel which would lead

to the Petitioner's ultimate disbarment. Again, the lower courts failed to apply equal protection-due process standards by not addressing both the procedural and substantive issues based on the test required for protected property rights constitutionally. (id.GG.Md.Code.2.Rule 1230, App.F,Code. Rules of Professional Conduct, Canon #1...Disciplinary Rules, DR 1-102. Misconduct. (1983/84), pg 60-64; See id.3.8.4 Misconduct, effective 01/01/87, pg 65-68).

Neither the Opinion by the lower court at the trial court level nor the state court of last resort, notwithstanding timely Exceptions being filed by the Petitioner to have these issues addressed, specifically omitted addressing these issues.

Aside from waiving through Opinion omission, (App.A, infra), the addressing of Maryland Rules and Statutes governing procedural and substantive issues on proof, notice, limitations, laches and jurisdiction, (R.Excpt.Bk. Excpt.III. at 23-27; 1Tr. 4-7, 15-16, 26-33, 51, 54-56), the lower courts also failed to apply the existing standard of review in the Maryland case law raised by your Petitioner in the proceedings below. (R.Excpt.Bk. at 18-19, 22-24) The Court of Appeals went out of its way to avoid the application of Attorney Grievance Commission v. Casalino, 335 Md. 446, 644 A.2d 43 (1994), in order to justify disbarment notwithstanding the unique compelling, mitigating and extenuating circumstances of your Petitioner. (R.Excpt.Bk., infra, 38-40).

Because of the lower court conflict with Maryland's sister States and this Court, in construing the application of the Federal Constitution's due process and equal protection clauses in attorney discipline proceedings, certiorari should be granted in this matter. (Sup.Ct. Rule 10(1)(b).

I. THE DECISION BELOW CONFLICTS WITH DECISIONS OF NUMEROUS FEDERAL AND STATE COURTS OF LAST RESORT THAT CONSTRUE THE FEDERAL CONSTITUTION TO REQUIRE NOTICE AND SPECIFICALLY

BAR COUNSEL TO PROVIDE WITHIN THE PETITION TO SUSPEND THE SPECIFIC GROUNDS FOR SUSPENSION

Bar discipline is not to punish the attorneys but to protect the public. Myers and Ruffalo.

It is a well founded principle that "Disbarment proceedings are subject to stringent due process requirements." Sanctions Under the New Federal Rule 11, A Closer Look by U.S. District Court Judge William Schwarzer (N.D. Cal.), 104 F.R.D. 181 at 204 (1985) citing at N. 78. Ruffalo.

In Maryland, the Court adopted a standard requiring both specific notice and linkage to specific allegations of misconduct or other Rule 1230 violations to be included in disciplinary petitions where licensure issues are involved. AGC v. Myers, 333 Md. 440, 635 A.2d 1315 (1994). In this case, had the Myers standards been applied by the lower court the suspension petition would have been dismissed.

This Court held that there is a lack of fair notice and an omission of the precise charges of attorney misconduct in licensing proceedings, the attorney was deprived of due process and equal protection of his federally protected property right requiring reversal. The holdings in Ruffalo and Myers in their progeny apply to your Petitioner and require his reinstatement to the Bar. In the Matter of John Ruffalo, Jr., 390 U.S. 544, 20 L.Ed.2d 117, 88 S.Ct. 1222, reh. denied 391, U.S. 961, 20 L.Ed.2d 874, 88 S.Ct. 1833 (1968). Ruffalo, dealt with an attorney's right to practice in Federal Court as affected by a suspension and/or disbarment in State Court or other Federal Court without notice and specificity of misconduct allegations in the petition for sanctions. (BV 3. supra; AGC Title 5.,Guidelines, supra).

Your Petitioner, without a hearing, was also suspended from practicing law before the U.S. District Court of Maryland in 1993, and this Court. He no doubt will now face the possibility of being disbarred from both Courts subject to the outcome of this proceeding, and/or any application for reinstatement to the Bar of Maryland without

a merits hearing to which he is entitled. (Unnamed, supra).

This same protection of a mandatory fact finding hearing is equally applicable to suspension and/or revocation as the end result is the same -- removal of a property right -- the State issued license to practice law. In fact, in a recently published Report of the Nat'l Commission on Judicial Discipline and Removal, recognized due process protection entitlements for attorneys in disciplinary proceedings, also citing Ruffalo. 152 F.R.D. 265 at 366 (1993). Kennick v. Comm'n. on Jud. Performance, 787 P.2d 591 (1990), 87 ALR 4th 679 (Jud.suspensions).

The Petitioner's evidence is undisputed that The Suspension Petition (App.D, infra, 18a-19a), failed to provide specific allegations of attorney wrong doing warranting suspension by trying his conduct to the existing Md. Rule 1230 governing the Md. Rules of Professional Conduct(App.B, infra, 11a-12a), Disciplinary Rule - DR.1-102, Misconduct and revised in 1987, 8.4, Misconduct). Herein, fundamental fairness dictates the Petition's absence of specifics, such as notice, strikes at the heart of the action and sanctions validity requiring the vacating of all disciplinary sanctions against the Petitioner.

Eash v. Riggins Trucking, Inc. 757 F.2d. 557, 571 (1995), 77 ALR Fed. 751. (Above a remand was ordered for further proceedings).

In the Petitioner's case, the Court below did not require specifics in the Petition as required by USCA 5th and 14th in these types of proceedings.

Clearly, there is no question that a professional license, such as a license to practice law, is a constitutionally protected property interest. In re Cordova-Gonzalez, 996 F.2d. 1334 at 1336 (1993) - Listing examples of constitutionally protected property rights. See also Lowe v. Scott, 959 F.2d. 323 at 334-35 (1992).

Had the Petitioner's proceedings occurred in another State, he either would have been given proper notice or the Petition for Suspension would have been dismissed on Federal Constitutional grounds. This alone makes a grant of

certiorari appropriate because the Court below, "has decided a federal question in a way that conflicts the decision of another State Court of last resort." Sup.Ct.Rule 10.(1)(b).

This Court should adopt, as a matter of Federal Constitutional law, the Rule that any petitions filed by Bar Counsel for disciplinary proceeds without notice including an absence of the alleged misconduct, should be vacated with further disciplinary proceedings on those issue being prohibited. Because this decision below conflicts with that Rule, certiorari should be granted and the disbarment and suspension below should be vacated and your Petitioner be reinstated to the practice of law immediately.

II. THE DECISION BELOW CONFLICTS WITH DECISIONS OF THIS COURT, AND OTHER STATE COURTS OF LAST RESORT INCLUDING THOSE WITHIN THE FOURTH CIRCUIT, THAT MANDATE THE FEDERAL CONSTITUTION REQUIRES VACATING OF DISCIPLINARY ACTIONS WHEN REQUIRED DUE PROCESS AND EQUAL PROTECTION ARE ABSENT IN THE DISCIPLINARY PROCESS AND BEFORE THE TAKING OF THE PETITIONER'S LICENSE TO PRACTICE LAW.

Your Petitioner did not have any fact finding evidentiary hearing. Rather than the highest State Court of last resort, ordering an independent tribunal evidentiary hearing or a Court evidentiary hearing, followed by the Court of Appeals review of the record below as the Reviewing Court, it became the Court of Record and Review without an evidentiary hearing.

"The Supreme Court has recognized a distinction between a disciplined attorney's challenge to his particular proceedings and a generalized Constitutional attack on the State Rules and Regulations governing discipline." District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983).

Not only can this Court look at the Federal Constitutional shortcomings in the instant case, but clearly it can..."Access the validity of the Rule promulgated in a non-judicial proceeding." (i.e., courts may act in a non-judicial capacity promulgating rules regulating the Bar). Razatos, infra, 1432.

Within this case, a brief survey of several states and Courts reflect that suspensions require full evidentiary hearings by peer review or the trial court followed by an independent review by the highest (Appellate) level of Court because of the law license being a Constitutionally protected property right in the State or Federal Court systems. The Tenth and First Circuits following this procedure conflict with Maryland. (CA10.) Razatos v. Colorado Supreme Court, 746 F.2d 1429. (CA1). In re Cordova-Gonzalez, supra.

This Court, in deciding Board of Regents v. Roth, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972), confirmed that where the State's law directly establishes a property interest (such as a license to practice law) by its own act, confirms the protections of the Federal Constitution's Fifth and Fourteenth Amendment protections.

Your Petitioner was entitled to the separate independent fact finding hearing rather than the Court of Appeals conducting the proceeding of record, which is a departure from its role as the ultimate Court of Review. See State ex rel Nebraska State Bar Assoc. vs. Michaelis, (1982) 316 NW 2d 46, cert. denied and App. dismissed 459 U.S. 804, 74 L.Ed.2d 42, 103 S.Ct. 27 reh. denied, 459 U.S. 1059 74 L.Ed.2d 625, 103 S.Ct. 479; 26 ALR 4th 154. Gonzalez, supra; Lowe, supra.

At least one other profession has an independent fact finding process before ultimate Appellate Review. Ezpeleta v. Sisters of Mercy Health Corp. (CA7.) 800 F.2d 119, 121 (1986) (hospital priv. lic./medical profession). Ainsworth v. State Bar, 252 Cal.Rptr. 267, 762 P.2d 4310, cert. denied 489 U.S. 1081, 103 L.Ed.2d 839, 109 S.Ct. 1534 reh. denied 490 U.S. 1059, 104 L.Ed.2d 442, 109

S.Ct. 1973, later proceeding (Cal) (1990) CAL LEXIS 2197 (State Supreme Court reviews fact finding independently).

Finally, with our own Fourth Circuit, there are conflicts in construing the Federal Constitution's mandating applicability of due process and equal protection in law licensure proceedings between Maryland and her sister state South Carolina. The latter called for (full) evidentiary hearings before and independently of Appellate Review. In the Matter of Robert L. Chipley, Jr., 448 F.2d 1234 (1971).

In citing Ruffalo, supra, the Court essentially held the due process hearing was not intended to be a summary review by the Appellate Court but rather an evidentiary merits hearing followed by the Appellate Courts independent review of the record. "Although the States actions is entitled to respect, it is not conclusively binding on the Federal courts." id. This is why hearings should be required before suspension or revocation of privileges in the Federal Court system as well. Each system has its own way of evaluating a particular set of circumstances.

In New York, due process fact-finding is also required before suspension Mildner v. Gulotta, 405 F.Supp. 182 at 210-213 (1975). (reversed on other grounds).

There is even a question as to whether a separate fact-finding hearing is required to protect Federally guaranteed Constitutional rights to due process and equal protection, notwithstanding State Court decisions.

In re Wilkes, 494 F2 472 at 477 (1994) (Fla.); Theard v. United States, 354 U.S. 278 at 281, 77 S.Ct. 1274 at 1276, 1 L.Ed.2d 1342 (1957) citing In re GLS, 745 F.2d 856 (1984) (D.Md.) 586 F.Supp. 375 (1983). United States v. Walsh, 699 F.Supp. 469 (1988) (D.N.J.)

Since your Petitioner was also suspended in the U.S. District Court and Supreme Court (and now presumably to be disbarred), without a hearing on the merits in those Federal Courts on a "theory of reciprocity", those suspensions would be contrary to the Federal Constitutional guarantees for protected property under the Fifth and Fourteenth Amendment. The same would hold true for disbarment.

While lower Courts have reaffirmed the importance of both case individuality, due process and equal protection (M.Dt. 24-25). Myers, supra. It simply did not happen in this case.

The Petitioner's law career spans three decades without any disciplinary sanctions against him. (T.87). Bar Counsel readily admits that not only was your Petitioner fit to practice law but that there was no evidence to the contrary in his client representation and lawyering skills. (1T.86; T.240).

Lester Jones' rights violations caused him to suffer a worse fate than the facts present in either the Ruffalo or Myers cases. Maryland Rules of Procedure were ignored.

To date, the lower Courts have yet to address, in their respective opinions, the equal protection and due process issues relating to both the suspension and revocation of attorney licensure including the substantive law and procedural processes in the fact finding hearings on Bar Counsel's pleadings. (App.A,B, infra). (BV 10.).

In fact, the Petitioner pointed out the suspension was improvidently granted and should be revisited by the court in its Exceptions review. BV 11.(b)(2) (R.Excpt.Bk. and Reply Memo.) The Court virtually ignored the suspension issues in its Opinion. (App.A, infra, 3a-4a, 8a-9a).

For to do so would require the reinstatement of the Petitioner's license. The deliberateness of these proceedings require the Petitioner to be entitled to compensation for the lost income and damage to his reputation as a result of the improvidently granted suspension. BV 15. Costs.

Under the BV Rules, Bar discipline proceedings are governed by the Maryland Civil Rules of Procedure. (BV 10.). By statutory necessity this would include, but not be limited to, limitations, laches and equity doctrines to be available as a defense. (BV 10.). The lower court denied the Petitioner's Motion to Dismiss on Limitations, Equity and Laches (T.171; 1T.16-22, 26-28, 46,71); Injunctive Relief was also denied on the illegal suspension without a fact finding hearing, (1T.29-33, 51,54-56).

In Maryland, absent specific limitations within a given statute, limitations are governed by the Maryland Code setting out general and specific causes of actions and limitations applications. (Md.Code, Cts. and Jud. Pro., Title 5., Limitations and Prohibited Actions. Generally, Subtitle 1., Limitations. 5-101, et seq; R.Ex.Bk. to the Petition and Amended Petition for Discpl. Action, Sect.GG. Md. Code.; GG.4, Limitations at 69-74).

Since the Rules governing discipline do not have self-contained limitations, statutory limitations come from the Code itself. This being the case, we only have to look at the cause of action arising in 1983-84, to realize at best, it falls under the three year limit for a non specified general cause of action. At the latest, looking to 1986, limitations should have tolled in 1989. Not from the date of a criminal prosecution that took almost six years and two trials to develop into a conviction without delays by your Petitioner in this process spanning over a decade.

It is unconscionable to allow Bar Counsel to be able to bring proceedings well over a decade after the events in question. To do so, is in clear conflict with the lower Court's doctrine in both Collins and Howard, supra. There can be no greater prejudice to your Petitioner or any other attorney subject to discipline proceedings of any kind than to not have a specific statute of limitations in which these causes of action can be maintained. Collins, recognizing the devastating nature of an open window, allows for laches as a defense which this the lower Court ignored in this case.

Howard recognized that discipline makes no sense and serves no other purpose than to punish the attorney where there is a lack of proximity between the wrong doing and the sanction. In this case, the time periods of conduct at issue were so far removed from reasonableness, that these proceedings were contrary to the lower Court's earlier rulings in addition to other sister states.

In essence, the Maryland Rules for Attorney Discipline, as they have been applied, unconstitutionally put the attorney-your Petitioner, at risk by making exposure

essentially never ending during the attorney's life time. Disciplinary proceedings may even affect an attorney's estate should their be pending proceedings at the time of his death that could prove to provide a basis for civil litigation which would otherwise be disallowed due to the tolling of limitations.

This denial of equal protection and due process through the non application of the Civil Rules of Procedure, is compounded for the attorney when the issues are suspension and/or revocation of licensure privileges such as in this case. It invites a lawyer such as the Petitioner with a career spanning 31 years of non discipline to be a victim of the "economic death penalty" by an unconstitutional suspension and eventual disbarment for arguably being convicted for paying his taxes.

The lower Court ignored the requirements of the BV Rules and Myers, supra, by its failure to take judicial notice of its own standards upon which your Petitioner had the right to rely before any sanctions were imposed upon him. Rather than dismiss with prejudice the Petition to Suspend. (App.D, infra, 18a-19a). It being defective by failing to provide the Constitutionally required notice and linkage to specific violations of Rule 1230 and the BV Rules governing attorney discipline, the Court elected to proceed.

Rule BV 16. requires a criminal conviction in order to be the triggering device for disciplinary sanctions and must be read in tandem with BV 10. generally, and (e)(1). The latter requires specific proof that a conviction outside of the Maryland Courts meet the following elements: (1) the comparable crime is a felony in Maryland and provide its Maryland equivalent; and, (2) there is a potential of three years incarceration exposure.

Once that specific proof is offered (which was absent in this case), there must be affirmative linkage to a specific section of Rule 1230, governing DR. 1-102, Misconduct. The reason for this is simple -- Not all criminal convictions were crimes of moral turpitude which was an element present in the period of 1983 to 1986, involving your Petitioner's

conduct. At that time, Maryland was operating under DR.1-102, Misconduct. In 1987, Rule 1230 was significantly and substantively modified including the former DR.1-102, which became 8.4, Misconduct. Among its elements eliminated was moral turpitude which was never affirmatively proven through linkage.

The Court not only recognized the non applicability of 8.4, but also Bar Counsel readily admitted that they proceeded under the wrong section when they stated in part: ..."inadvertently cited..."come into play and were not affective until January 1987"...1T.40. Further, the suspension was characterized as..."merely a temporary intervening action...1T.54. See also T.25.

It was this latter non-applicable section of Rule 1230 that at the very least, was utilized impliedly, if not specifically, by Bar Counsel in its suspension action against the Petitioner. The misplaced reliance becomes crystal clear in its pleadings and amended pleadings in the Petition and Amended Petition for Disciplinary Action leading to disbarment. (App.E, infra, 21a-27a).

Judge Daniels in his fact finding hearing Opinion in the latter pleadings, recognized this misapplication of the wrong standards by Bar Counsel. (App.B, infra, 12a).

By ignoring the Constitutional mandates requiring fact-finding hearings for Constitutionally protected rights, in lieu of the Court of last resort becoming both the Court of Record and Review, the Petitioner lost the independent hearing process, the BV Rules contemplate. BV 11(b)(4),(5). This chain of events was taking place notwithstanding his timely Appeal of the Federal conviction in his second trial. (T.124).

To further highlight the denial of equal protection to your Petitioner, the Court of Appeals allowed post-Jones, in at least one instance, an attorney to continue to practice while he appealed his multiple federal jury convictions for fraud related charges.

AGC v. Bereano, 338 Md. 481, 659 A.2d 874 (1995). AGC v. Unnamed Attorney, 467, A.2d 517, 518-

519, Md. (1983). There have been allowances for attorneys who have either entered guilty pleas or otherwise have been found guilty on multiple tax-related misdemeanors or felonies whose cumulative sentencing for each of those acts would have exceeded the three year potential incarceration. BV 16. AGC v. Walman, 280 Md. 453 (1977). (R.Excpt.Bk. at 6, 23-24); His suspension was for substantially less than the Petitioner's. Additionally, there was AGC v. Breschi, 340 Md. 590, 667 A.2d 659 (1995). In this case, it was an attorney who was a former IRS agent, who failed to file multiple year returns and/or amended returns. He clearly had the special expertise that your Petitioner did not have of the tax laws and yet was suspended for only six months. He never paid his taxes like the others prior to any criminal investigation if at all. (T.90-93).

Perhaps the most glaring but consistent pattern of the denial to equal protection and due process of your Petitioner and attorneys in licensure hearings similarly situated, was the avoidance of standards which the lower Court established in Casalino, supra. (R.Excpt.Bk. 38-40). This is coupled with the lower courts Opinion ignoring the Constitutional issues as well. (App.A, infra, 1a-10a).

As Judge Daniels pointed out in his Opinion without specifically citing this case, he found your Petitioner overwhelmingly met the proof required to show he was a victim of compelling, mitigating and extenuating circumstances, which would have qualified him for a lesser sanction than disbarment. (App.B, infra, 14a-16a).

Unlike Casalino, your Petitioner received no credit for cooperating with the IRS in the random civil audit months before any criminal investigation began. Neither he nor his counsel received any notice about the criminal investigation until all taxes, penalties and interest had been fully paid by the Petitioner in the mutual cooperative effort with the IRS to resolve the dispute. Nor did he receive any mention of his suspension time which at that point, was in to the fourth year.

It certainly should be mitigating against intent to show through Bar Counsel's own witnesses, the IRS agents testimony, that they had worked with Jones, his staff and tax preparer which resulted in the amended return being filed with no further monies owed to the IRS. The Opinion was negative in this area as well. (App. A, infra, 8a).

The Fifth Circuit recognized payment as mitigating in Bursten v. United States, 395 F.2d 976 (1978) and Berkovitz v. United States, 213 F.2d 468 (1954).

The lower Courts failed to recognize that not only his reliance upon the tax preparer as mitigating, but that his payment of taxes removes the element of criminal intent. It would also remove the element of willfulness required to sustain a finding of misconduct under Rule 1230. This would necessarily hold true after a citizen's right to dispute his taxes upon being audited as an end result to that dispute without the need of litigation, paid the taxes. Maryland conflicts with the Fifth, Sixth and its own Fourth Circuit.

Heindel v. United States, (CA6), 150 F.2d 493 (1995), (T.209-210), Further, the State Court conflicts with Federal decisions from the Fourth Circuit as well on this issue. United States v. Head, 697 F.2d 1200 at 1222, cert.denied. 103 S.Ct. 3113 (1992); 12 Fed. Rules of Evidence 71. See also, Beard v. United States, 222 F.2d 84 (1955), cert.denied 350 U.S. 846, 100 L.Ed. 753, 76 S.Ct. 48, reh. denied 305 U.S. 905, 100 L.Ed.794, 76 S.Ct. 175.

The Motions to have these matters dismissed as well as to have the Injunctive Relief granted was denied below. (1T.15,29-33). Notwithstanding the proof of payment, (T.209-210, 216-217), the trial lower Court found that there was misconduct under Maryland Rule 1230, but with mitigating, compelling and extenuating circumstances. It made no recommendations as to sanctions if any, for the Appellate Court to consider. (App.B, infra).

The Court of last resort below acted unconstitutionally from the time the defective initial pleadings to suspend by Bar Counsel were filed with the Court up through the Petition and Amended Petition for Discipline. (No Amended

Show Cause Order was required by the Court notwithstanding the Rules, denying another opportunity for a fact-finding hearing). (BV 9., 10.). It was the Court below who failed to apply the Maryland Rules and its own case law. This was in addition to the recognized standards established both within the Fourth Circuit and that of other sister states which caused the unprecedented denial of due process and equal protection in the Bar disciplinary process. The end result was an initial unconstitutional suspension of his law license for over three years followed by the unconstitutional disbarment.

Additionally, the burden of proof requires clear and convincing evidence to be presented by Bar Counsel to sustain sanctions. Lester Jones, had he been given the opportunity to present witnesses at his suspension hearing, would have been able to easily overcome this burden of proof.

Clearly, when the analysis is concluded, this Court upon review will conclude that the intent of BV 3(b)(i).Commission Powers and Procedures, (b).Powers and Duties, clearly contemplate that disciplinary proceedings which are going to be contested even if pursuant to BV 16. supra, requires an independent fact-finding hearing. Our highest court of last resort also made that determination in Unnamed Attorneys, supra, in that case it dealt with the right of protection against self incrimination in disciplinary proceedings, but the concept holds just as true for your Petitioner. For guidance, see The Administrative and Procedural Guidelines adopted by the Attorney Grievance Commission of Maryland, Title 5. Inquiry Panel Procedures, 5-101 et seq. These Guidelines are set out everything from time limit response to attorneys on complaints. (id. 104). to the conduct of the hearings themselves including evidence presentation and review of that decision. (id. Subtitle 2. Conduct of Panel Hearings in General, 5-201 et seq.; id. Subtitle 3. Nature of Proceedings and Respondents Rights, 5-301 et seq.; id. 305. Presentation of Evidence, and id. Subtitle 4. Recommendations; Dismissal, 5-401 et seq.)

The decision below is clearly wrong to have suspended the Petitioner without an evidentiary hearing, due process hearing which is then independently reviewed by the Court of Appeals on that record below.

The Maryland Attorney Discipline BV Rules and Procedures are unconstitutional on their face and as applied to the Petitioner denying due process and equal protection.

There is a stark conflict between the decision below and another State Court of last resort as well as Federal Court decisions and the Constitutional violations are reoccurring, the Court should grant Certiorari. (S.Ct. Rule 10(1)(b)). Because this decision conflicts with that Rule, certiorari should be granted and the disbarment and suspension below should be vacated with your Petitioner reinstated to the practice of law immediately.

CONCLUSION

The Petition for a writ of certiorari should be granted.
Respectively submitted.

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AUGUST 1996

APPENDIX A

UNREPORTED

IN THE COURT OF APPEALS OF MARYLAND

Misc. Docket (Subtitle BV)

No. 37

September Term, 1992

ATTORNEY GRIEVANCE COMMISSION

v.

LESTER V. JONES

Murphy, C. J.
Eldridge
Rodowsky
Chasanow
Karwacki
Bell
Raker,

JJ.

PER CURIAM
Eldridge, J., concurs in the result only.

Filed: May 17, 1996

PER CURIAM:

The Attorney Grievance Commission, acting through Bar Counsel, filed a Petition for Disciplinary Action against Lester V. Jones, alleging violations of the Code of Professional Responsibility. We referred the matter, pursuant to Maryland Rule BV[b], to Judge Lawrence R. Daniels of the Circuit Court for Baltimore County to make findings of fact and conclusions of law. Judge Daniels, after a hearing, made the following findings and conclusions:

"On April 23, 1992, a jury sitting in the United States District Court for the District of Maryland found Lester V. Jones (the "Respondent") guilty of willfully attempting to evade and to defeat taxes due for years 1983 and 1984, in violation of 26 USC Section 7201 and 18 USC Section 2. On September 30, 1992, the Respondent was committed to the custody of the Attorney General for imprisonment, having been sentenced to two concurrent terms of 18 months. He was further ordered to pay a fine in the amount of $25,000 as to Count 1, and a special assessment of $50.00 as to Count 2.

"Subsequently, the Attorney Grievance Commission (hereinafter, "AGC") acting through Bar Counsel, petitioned to suspend Respondent from the practice of law pursuant to Maryland Rule BV 16. On February 11, 1993, the Court of Appeals did suspend the Respondent, pending further action by the AGC.

"In due course, the AGC filed a Petition for Disciplinary Action on November 15, 1994. Pursuant to an Order of the Court of Appeals the charges contained in the pleadings were transmitted to the Circuit Court for Baltimore County to be heard and determined by this Court in accordance with Maryland Rule BV 9 et seq.

"In its Amended Petition for Disciplinary Action, the AGC alleged that the Respondent committed professional misconduct in violation of the following disciplinary rule: *DR 1-102 Misconduct.

(A) A lawyer shall not:

(1) violate a disciplinary rule;

(2) engage in illegal conduct involving moral turpitude;

(3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(4) engage in conduct that is prejudicial to the administration of justice; or

(5) engage in any other conduct that adversely reflects on his fitness to practice law.

* In its original Petition for Disciplinary Action (Paper 1), the AGC improperly charged the Respondent with a violation of Rule 8.4. As currently written, it is Professional Misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official; or

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

"As a preliminary to the Rule BV 16c hearing, this Court heard arguments on Respondent's Motion to Dismiss

and Request for Temporary and Permanent Injunctive Relief, and Respondent's Motion for Summary Judgment, Petition and Amended Petition and Request for Hearing and Other Relief. The Motions were denied.

"The AGC's case against the Respondent was uncommonly succinct. The AGC introduced exhibits consisting of certified records from the United States District Court for the District of Maryland, in the case of United States of America vs. Lester V. Jones, including the original indictment charging two counts of tax evasion as well as aiding and abetting; a superseding indictment which also charged two counts of tax evasion and aiding and abetting; as well as two counts of fraud and false statement in the preparation and filing of tax returns for 1983 and 1984 (the jury rendered a verdict of "Not Guilty" on these two counts); docket entries of the proceedings in the case and the Judgment, which recited the jury's verdict of guilty as to Counts 1 and 2 of the superseding indictment, not guilty as to Counts 3 and 4 of the superseding indictment, the Defendant's sentence to 18 months incarceration and a fine of $25,000. With the submission of these documents into evidence, the Commission rested its case against the Respondent.

"Having found that a Judgment of Conviction on two counts of willfully attempting to evade and defeat the payment of income tax, and two counts of aiding and abetting therein, was entered against the Respondent on September 30, 1992, in the United States District Court for the District of Maryland, Case MJG-90-0405, the Court makes the following conclusions of law:

1. That the Respondent's conviction is a conclusive proof of his guilt of the charged crime;

2. That the crime of willfully attempting to evade and defeat income tax due, and aiding and abetting therein, is a crime of moral turpitude;

3. That the crime of willfully attempting to evade and defeat payment of income tax due, and aiding and abetting therein, is a crime involving dishonesty, fraud,

deceit and misrepresentation;
"These exhibits provide clear and convincing evidence of the Respondent's conviction.**

**Maryland Rule BV10E1 "In a hearing of charges pursuant to this Rule, a final judgment by a judicial tribunal in another proceeding convicting an attorney of a crime shall be conclusive proof of the guilt of the attorney of that crime. A plea or verdict of guilty, or a plea of nolo contendre followed by a fine or sentence, is a conviction within the meaning of this Rule."

4. That the crime of willfully attempting to evade and defeat payment of income tax due, and aiding and abetting therein, constitutes conduct that is prejudicial to the administration of justice;

5. That the crime of willfully attempting to evade and defeat payment of income tax due, and aiding and abetting therein, constitutes an act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

"The Respondent's case consisted of matters in mitigation emphasizing his good character and illustrious career as a practicing attorney and accentuating the hardships flowing from his conviction in Federal Court.

"Clear and convincing evidence was adduced as to the following facts. At the time the Respondent presented his case to the Court he was sixty-two years of age, a graduate of Mount Vernon Law School, admitted to the Bar in 1961, a Korean Was Veteran, Assistant State's Attorney for Baltimore County from 1962 to 1966, and member of the House of Delegates of the Maryland General Assembly from 1966 to 1975.

"When he became the focus of an IRS investigation of his finances in 1986, the Respondent produced all records requested by the IRS without subpoena, immediately paid all taxes due as well as interest and penalties for the years in question and did not, at any time, invoke his Fifth Amendment privilege against self-incrimination.

"The Respondent reported for incarceration on January 4, 1992, at the Federal Correctional Facility located on the grounds of Eglund Air Force Base, Florida. He worked for the Warden of the Eglund facility as a gardener, was commended as a model prisoner, and received an early release on June 20, 1992, after serving five months of his sentence.

"Upon his release from custody, the Respondent performed 1,000 hours of community service with Bea Gaddy as a condition of his early release, and continues to work with her on a voluntary basis. He pays his fine of $25,000, at the rate of $100.00 per month, contending that the payment of legal fees for his defense has rendered him virtually indigent.

" A legion of character witnesses attested to the Respondent's professionalism and integrity as a lawyer. The Honorable Broadnax Cameron, retired from the Circuit Court Bench in Harford County, testified that the Respondent had never misrepresented a matter in the many years the Respondent had appeared before his court. Judge Cameron highlighted the Respondent's honesty, his practicality and lack of gamesmanship in the courtroom, as well as his excellent courtroom manners. "His word is to be respected." Bea Gaddy also appeared on behalf of the Respondent. She advised that the Respondent had performed a full spectrum of volunteer services while serving his court-ordered 1,000 hours of community service and had continued to volunteer even after the completion of those hours. The Respondent has raised funds to feed the poor, worked with troubled youth, published a newsletter, and recruited others to work under the penumbra of Ms. Gaddy's service organizations.

"Current Harford County Judges presented character references for the Respondent by correspondence. The Honorable William O. Carr, Administrative Judge for the Circuit Court for Harford County, voiced high respect for the Respondent "both as an attorney and as an individual." The Respondent always adhered to high professional standards while vigorously representing the interests of his

clients. The Honorable Maurice W. Baldwin, Jr. of the Circuit Court for Harford County, indicated that he had known Mr. Jones for many years and was in a position to offer much favorable evidence on his behalf. Finally, District Court Judge John L. Dunnigan wrote advising the Court that he had experienced the Respondent both as a Prosecutor and Judge. The Respondent was always "up front with me" when Judge Dunnigan was an Assistant State's Attorney. As a judicial officer, Judge Dunnigan has found the Respondent to be forthright and honest and extremely diligent in working for his clients.

"The Respondent's prosecution, incarceration, and these disciplinary proceedings have taken a tremendous toll physically and emotionally, as evidenced by the respondent's gaunt and haggard appearance."

Bar Counsel took no exceptions to Judge Daniel's findings and has recommended disbarment as the appropriate sanction for Jones's misconduct. Jones has taken numerous exceptions to Judge Daniel's findings which, in largest part, attempt to re-litigate whether he is actually guilty of the crimes for which he was convicted. In this vein, he argues that his cooperation with the Internal Revenue Service when it conducted both its civil and criminal investigations demonstrates that he had no intention of defrauding the government. He also contends that the testimony of two IRS agents presented by Bar Counsel demonstrates his lack of intent, and that in this connection we should consider his numerous character references as evidence of his honesty and integrity.

Maryland Rule BV10(e)(1) clearly provides that "[i]n a hearing of charges pursuant to this Rule, a final judgment by a judicial tribunal in another proceeding convicting an attorney of that crime." We have repeatedly held that "willful tax evasion is a crime infested with fraud, deceit and dishonesty, and will result in automatic disbarment absent clear and convincing evidence of a compelling reason to the contrary." Attorney Griev. Comm'n v. Casalino, 335 Md. 446, 448-49, 644 A.2d 43 (1994) (disbarring attorney

following conviction for willfully attempting to evade income tax due and upholding findings of law substantially similar to those found here). To the same effect, see Attorney Griev. Comm'n v. Clinton, 308 Md. 701, 521 A.2d 1202 (1987); Bar Ass'n of Balto. City v. Siegel, 275 Md. 521, 524, 340 A.2d 710 (1975); Maryland St. Bar Ass'n v. Agnew, 271 Md. 543, 551, 318 A.2d 811 (1974).

As in Casalino, Jones's cooperation with the government "subsequent to his criminal activity, and then only because it was detected" does not "serve to palliate the evil of his offenses." Casalino, supre, 335 Md. at 452 (quoting Maryland St. Bar Ass'n v. Callanan, 271 Md. 554, 557, 318 A.2d 809 (1974)) (emphasis in original.

Nor does the fact that Jones paid all tax deficiencies before the government began its criminal investigation lessen the gravity of his crimes. Neither does Jones's good character references attesting to his integrity and honesty minimize the severity of the crimes for which he was convicted. Absent a compelling reason to the contrary, and we find none in this case, disbarment is the appropriate sanction in this case. 1

IT IS SO ORDERED. RESPONDENT SHALL PAY ALL COSTS AS TAXED BY THE CLERK OF THIS COURT, INCLUDING THE COSTS OF TRANSCRIPTS PURSUANT TO MARYLAND RULE BV15 c, FOR WHICH SUM JUDGMENT IS ENTERED IN FAVOR OF THE ATTORNEY GRIEVANCE COMMISSION AGAINST LESTER V. JONES.

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1 We have considered but find no merit in Jones's other contentions, in particular, his argument that Bar Counsel was estopped from initiating these proceedings since his criminal convictions related to tax returns filed in 1983 and 1984. In this regard, Bar Counsel initiated disbarment proceedings one year after Jones's conviction in 1992.

Similarly, Jones's attempt to re-litigate this Court's decision on February 11, 1993 temporarily suspending him from the practice of law is of no consequence in the present proceeding.

NOTICE

May 17, 1996

I, Alexander L. Cummings, Clerk of the Court of Appeals of Maryland, do hereby certify that by a Per Curiam opinion of this Court dated May 17, 1996

LESTER V. JONES
2500 Patterson Farms Road
Hydes, Maryland 21082

has been disbarred from the practice of law in this State and his name as an attorney at law has been stricken from the register of attorneys in this Court (Maryland Rule BV13) until further Order of this Court.

IN TESTIMONY WHEREOF, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals of Maryland this 17th day of May, 1996.

Alexander L. Cummings
Clerk
Court of Appeals of Maryland

APPENDIX B

ATTORNEY	*	IN THE CIRCUIT
GRIEVANCE	*	
COMMISSION OF	*	COURT FOR
MARYLAND	*	BALTIMORE COUNTY
V.	*	CASE NO. 94 CV 10616
LESTER V. JONES	*	

****

FINDINGS OF FACT AND CONCLUSIONS OF LAW

"On April 23, 1992, a jury sitting in the United States District Court for the District of Maryland found Lester V. Jones (the "Respondent") guilty of willfully attempting to evade and to defeat taxes due for years 1983 and 1984, in violation of 26 USC Section 7201 and 18 USC Section 2. On September 30, 1992, the Respondent was committed to the custody of the Attorney General for imprisonment, having been sentenced to two concurrent terms of 18 months. He was further ordered to pay a fine in the amount of $25,000 as to Count 1, and a special assessment of $50.00 as to Count 2.

"Subsequently, the Attorney Grievance Commission (hereinafter, "AGC") acting through Bar Counsel, petitioned to suspend Respondent from the practice of law pursuant to Maryland Rule BV 16. On February 11, 1993, the Court of Appeals did suspend the Respondent, pending further action by the AGC.

"In due course, the AGC filed a Petition for Disciplinary Action on November 15, 1994. Pursuant to an Order of the Court of Appeals the charges contained in the pleadings were transmitted to the Circuit Court for Baltimore County to be heard and determined by this Court in accordance with Maryland Rule BV 9 et seq.

"In its Amended Petition for Disciplinary Action, the AGC alleged that the Respondent committed professional misconduct in violation of the following disciplinary rule: *DR 1-102 Misconduct.

(A) A lawyer shall not:

(1) violate a disciplinary rule;

(2) engage in illegal conduct involving moral turpitude;

(3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(4) engage in conduct that is prejudicial to the administration of justice; or

(5) engage in any other conduct that adversely reflects on his fitness to practice law.

* In its original Petition for Disciplinary Action (Paper 1), the AGC improperly charged the Respondent with a violation of Rule 8.4. As currently written, it is Professional Misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official; or

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

"As a preliminary to the Rule BV 16c hearing, this Court heard arguments on Respondent's Motion to Dismiss

and Request for Temporary and Permanent Injunctive Relief, and Respondent's Motion for Summary Judgment, Petition and Amended Petition and Request for Hearing and Other Relief. The Motions were denied.

"The AGC's case against the Respondent was uncommonly succinct. The AGC introduced exhibits consisting of certified records from the United States District Court for the District of Maryland, in the case of United States of America vs. Lester V. Jones, including the original indictment charging two counts of tax evasion as well as aiding and abetting; a superseding indictment which also charged two counts of tax evasion and aiding and abetting; as well as two counts of fraud and false statement in the preparation and filing of tax returns for 1983 and 1984 (the jury rendered a verdict of "Not Guilty" on these two counts); docket entries of the proceedings in the case and the Judgment, which recited the jury's verdict of guilty as to Counts 1 and 2 of the superseding indictment, not guilty as to Counts 3 and 4 of the superseding indictment, the Defendant's sentence to 18 months incarceration and a fine of $25,000. With the submission of these documents into evidence, the Commission rested its case against the Respondent.

"Having found that a Judgment of Conviction on two counts of willfully attempting to evade and defeat the payment of income tax, and two counts of aiding and abetting therein, was entered against the Respondent on September 30, 1992, in the United States District Court for the District of Maryland, Case MJG-90-0405, the Court makes the following conclusions of law:

1. That the Respondent's conviction is a conclusive proof of his guilt of the charged crime;

2. That the crime of willfully attempting to evade and defeat income tax due, and aiding and abetting therein, is a crime of moral turpitude;

3. That the crime of willfully attempting to evade and defeat payment of income tax due, and aiding and abetting therein, is a crime involving dishonesty, fraud,

deceit and misrepresentation;
"These exhibits provide clear and convincing evidence of the Respondent's conviction.**

**Maryland Rule BV10E1 "In a hearing of charges pursuant to this Rule, a final judgment by a judicial tribunal in another proceeding convicting an attorney of a crime shall be conclusive proof of the guilt of the attorney of that crime. A plea or verdict of guilty, or a plea of nolo contendre followed by a fine or sentence, is a conviction within the meaning of this Rule."

4. That the crime of willfully attempting to evade and defeat payment of income tax due, and aiding and abetting therein, constitutes conduct that is prejudicial to the administration of justice;

5. That the crime of willfully attempting to evade and defeat payment of income tax due, and aiding and abetting therein, constitutes an act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

"The Respondent's case consisted of matters in mitigation emphasizing his good character and illustrious career as a practicing attorney and accentuating the hardships flowing from his conviction in Federal Court.

"Clear and convincing evidence was adduced as to the following facts. At the time the Respondent presented his case to the Court he was sixty-two years of age, a graduate of Mount Vernon Law School, admitted to the Bar in 1961, a Korean Was Veteran, Assistant State's Attorney for Baltimore County from 1962 to 1966, and member of the House of Delegates of the Maryland General Assembly from 1966 to 1975.

"When he became the focus of an IRS investigation of his finances in 1986, the Respondent produced all records requested by the IRS without subpoena, immediately paid all taxes due as well as interest and penalties for the years in question and did not, at any time, invoke his Fifth Amendment privilege against self-incrimination.

"The Respondent reported for incarceration on January 4, 1992, at the Federal Correctional Facility located on the grounds of Eglund Air Force Base, Florida. He worked for the Warden of the Eglund facility as a gardener, was commended as a model prisoner, and received an early release on June 20, 1992, after serving five months of his sentence.

"Upon his release from custody, the Respondent performed 1,000 hours of community service with Bea Gaddy as a condition of his early release, and continues to work with her on a voluntary basis. He pays his fine of $25,000, at the rate of $100.00 per month, contending that the payment of legal fees for his defense has rendered him virtually indigent.

" A legion of character witnesses attested to the Respondent's professionalism and integrity as a lawyer. The Honorable Broadnax Cameron, retired from the Circuit Court Bench in Harford County, testified that the Respondent had never misrepresented a matter in the many years the Respondent had appeared before his court. Judge Cameron highlighted the Respondent's honesty, his practicality and lack of gamesmanship in the courtroom, as well as his excellent courtroom manners. "His word is to be respected." Bea Gaddy also appeared on behalf of the Respondent. She advised that the Respondent had performed a full spectrum of volunteer services while serving his court-ordered 1,000 hours of community service and had continued to volunteer even after the completion of those hours. The Respondent has raised funds to feed the poor, worked with troubled youth, published a newsletter, and recruited others to work under the penumbra of Ms. Gaddy's service organizations.

"Current Harford County Judges presented character references for the Respondent by correspondence. The Honorable William O. Carr, Administrative Judge for the Circuit Court for Harford County, voiced high respect for the Respondent "both as an attorney and as an individual." The Respondent always adhered to high professional standards while vigorously representing the interests of his

clients. The Honorable Maurice W. Baldwin, Jr. of the Circuit Court for Harford County, indicated that he had known Mr. Jones for many years and was in a position to offer much favorable evidence on his behalf. Finally, District Court Judge John L. Dunnigan wrote advising the Court that he had experienced the Respondent both as a Prosecutor and Judge. The Respondent was always "up front with me" when Judge Dunnigan was an Assistant State's Attorney. As a judicial officer, Judge Dunnigan has found the Respondent to be forthright and honest and extremely diligent in working for his clients.

"The Respondent's prosecution, incarceration, and these disciplinary proceedings have taken a tremendous toll physically and emotionally, as evidenced by the respondent's gaunt and haggard appearance."

Respectfully, submitted,

s/LAWRENCE R. DANIELS
LAWRENCE R. DANIELS
JUDGE
CIRCUIT COURT FOR BALTIMORE CO.

cc: Kendall R. Calhoun, Esquire
John C. Broderick, Esquire
Stuart Jay Robinson, Esquire

APPENDIX C

ATTORNEY	*	IN THE COURT OF
GRIEVANCE	*	
COMMISSION OF	*	APPEALS OF MARYLAND
MARYLAND	*	Misc. Docket (BV)
V.	*	No. 37, Sept. Term 1992
LESTER V. JONES	*	

****

ORDER

Pursuant to Rule BV 16 of the Maryland Rules of Procedure, the Attorney Grievance Commission petitioned the Court for the immediate suspension of the Respondent, Lester V. Jones, from the practice of law in this State as a result of the Respondent's convictions of income tax evasion entered in the United States District Court for the District of Maryland on April 22, 1992.

After the Respondent filed a reply to the petition and the Attorney Grievance Commission responded thereto, the Court held a hearing. Upon careful consideration of the written and oral arguments of the parties, it is this 11th day of February, 1993,

ORDERED, by the Court of Appeals of Maryland, a majority of the Court concurring, that the petition to suspend attorney be, and it is hereby, GRANTED, and the Respondent, Lester V. Jones, is immediately suspended from the practice of law in Maryland pending the results of disciplinary proceedings hereafter to be filed against the Respondent by Bar Counsel, and it is further

ORDERED, that the Clerk of this Court shall strike the name of Lester V. Jones from the register of attorneys, and pursuant to Maryland Rule BV13, shall certify that fact to the Trustees of the Clients' Security Trust Fund and the clerks of all judicial tribunals in the State.

s/ ROBERT C. MURPHY
CHIEF JUDGE

Judge Eldridge would have denied the petition to suspend.

APPENDIX D

ATTORNEY	*	IN THE COURT OF
GRIEVANCE	*	
COMMISSION OF	*	APPEALS OF
MARYLAND	*	MARYLAND
V.	*	Misc. Docket (BV)
LESTER V. JONES	*	September Term 1992

****

PETITION TO SUSPEND ATTORNEY FROM THE PRACTICE OF LAW

The Petition of the Attorney Grievance Commission of Maryland, by Melvin Hirshman, Bar Counsel, and Kendall R. Calhoun, Assistant Bar Counsel, its attorneys, pursuant to Rule BV16, Maryland Rules of Procedure, respectfully represents unto your Honors:

1. The Respondent was admitted as a member of the Bar of this Court on June 15, 1961 and maintains an office for the practice of law at 539 Rock Spring Avenue, Bel Air, Maryland 21014.

2. On or about October 18, 1990, the Respondent was charged in the United States District Court for the District of Maryland with violations of 26 U.S.C. Section 7201 (tax evasion) and 18 U.S.C. Section 2 (aiding and abetting). A certified copy of the Indictment is attached hereto and by reference incorporated herein.

3. On or about March 21, 1991, Respondent was charged in a Superseding Indictment with violations of 26 U.S.C. 7201 (tax evasion); 26 U.S.C. 7206(1) (false declaration) and 18 U.S.C. Section 2 (aiding and abetting). A certified copy of that superseding indictment is attached hereto and by reference incorporated herein.

4. On or about April 22, 1992, the Respondent was found guilty, after jury trial, of counts 1 and 2 of the superseding indictment referred to in paragraph #3 above.

5. On September 25, 1992, the Respondent received a sentence of 18 months and was ordered to pay a fine of $25,000. A certified copy of the Docket Entries and Judgment In A Criminal Case are attached hereto and

incorporated herein by reference.

WHEREFORE, Petitioner prays this Honorable Court to:

A. Suspend the Respondent from the practice of law until its further order; and

B. Take such other and further action as it may deem appropriate under the circumstances.

s/ MELVIN HIRSHMAN
Bar Counsel

s/ KENDALL R. CALHOUN
Assistant Bar Counsel
Attorney Grievance Comm
of Maryland
100 Community Place,
Suite 3301
Crownsville, Maryland 21032-2027
Phone: (410) 514-7051 or
800-492-1660

APPENDIX D

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND	* IN THE * COURT OF APPEALS * OF MARYLAND
V.	* MISC. DOCKET (Subtitle BV)
LESTER V. JONES	* No. 37, September Term 1992

* * * * * * * * * * * * * * *

SHOW CAUSE ORDER

Upon the foregoing Petition to Suspend Attorney from the Practice of law filed by the Attorney Grievance Commission of Maryland, it is this 22nd day of October, 1992,

ORDERED, by the Court of Appeals of Maryland, that Lester V. Jones, a member of the Bar of the State of Maryland, in writing, show cause if there by any, on or before November 16, 1992, why he should not be suspended from the practice of law until further Order of this Court; provided, however, that he be served with a copy of this Show Cause Order and the said petition on or before the 2nd day of November, 1992.

s/ ROBERT C. MURPHY
CHIEF JUDGE

APPENDIX E

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND	*	IN THE COURT OF APPEALS OF MARYLAND
V.	*	MISC. DOCKET (Subtitle BV)
LESTER V. JONES	*	No. 37, September Term 1992

* * * * * * * * * * * * * * *

PETITION FOR DISCIPLINARY ACTION

Petitioner, the Attorney Grievance Commission of Maryland, by Melvin Hirshman, Bar Counsel, and Kendall R. Calhoun, Assistant Bar Counsel, its attorneys, pursuant to Rule BV16 and BV9 of the Maryland Rules of Procedure, respectfully represents unto the Court:

1. Petitioner, by reference, incorporates as if fully set forth herein, all of the allegations contained in the Petition to Suspend Attorney from the Practice of Law filed hereinbefore.

2. Respondent was suspended from the practice of law by Order of this Court on February 11, 1993.

3. Respondent has been barred by the passage of time from seeking any or further appellate review of his conviction.

4. Respondent was sentenced to serve eighteen (18) months and began serving his sentence on or about January 4, 1993.

5. On or about June 24, 1993, Respondent was released from incarceration and was to remain on probation until July 19, 1994.

6. The crime of which the Respondent was convicted involved misconduct in violation of the following Rules of Professional Conduct:

RULE 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional conduct, knowingly assist or induce another to

do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honest, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, Petitioner prays that this Honorable Court:

A. Take such disciplinary action against the Respondent as it deems appropriate;

B. Assess against the Respondent in the form of a money judgment, the reasonable costs of these proceedings both arising subsequent to the filing of these charges and necessarily incurred in investigating the same prior to the filing of said charges, and;

C. Take such other and further action as this Court may deem appropriate under the circumstances.

s/ MELVIN HIRSHMAN
MELVIN HIRSHMAN
Bar Counsel

s/ KENDALL R. CALHOUN
KENDALL R. CALHOUN
Asst. Bar Counsel

Attorney Grievance Commission
of Maryland
100 Community Place
Suite 3301
Crownsville, Maryland 21032
Phone: (410) 514-7051 or
800-492-1660

Attorneys for Petitioner

APPENDIX E

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND	*	IN THE COURT OF APPEALS OF MARYLAND
V.	*	MISC. DOCKET (Subtitle BV)
LESTER V. JONES	*	No. 37, September Term 1992

* * * * * * * * * * * * * * *

ORDER

WHEREAS, the Attorney Grievance Commission of Maryland, by Bar Counsel, has filed a petition for disciplinary action against Lester V. Jones, a member of the Bar of this Court, alleging that the Respondent did unethically and unprofessionally violate certain provisions of the Maryland Rules of Professional Conduct, it is this 18th day of November, 1994,

ORDERED, by the Court of Appeals of Maryland that the charges contained in the pleadings attached hereto be, and they are hereby, transmitted to the Circuit Court for Baltimore County to be heard and determined by Judge Lawrence R. Daniels of the Circuit Court for Baltimore County, in accordance with Maryland Rule BV9 et seq.; and it is further

ORDERED, that the Clerk of the Circuit Court for Baltimore County shall deliver forthwith a copy of this Order and the attached pleadings to Kendall R. Calhoun, Assistant Bar Counsel, for personal service on the Respondent's counsel by a private process server, returnable to the Circuit Court for Baltimore County, directing Lester V. Jones to respond to the charges within fifteen (15) days from the date of said service in accordance with Maryland Rule BV 9 e 2; and it is further

ORDERED, that the hearing in this matter be held not later than thirty (30) days from the filing of the response and that no extension shall be granted by Order of this Court.

s/ ROBERT C. MURPHY
CHIEF JUDGE

APPENDIX E

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND	*	IN THE COURT OF APPEALS OF MARYLAND
Petitioner	*	
V.	*	MISC. DOCKET (Subtitle BV)
LESTER V. JONES	*	No. 37, September Term 1992
Respondent	*	In the Circuit Court
	*	For Baltimore County
	*	Case NO. 96/300/94cv10616

* * * * * * * * * * * * * * *

AMENDED PETITION FOR DISCIPLINARY ACTION

Petitioner, the Attorney Grievance Commission of Maryland, by Kendall R. Calhoun, Assistant Bar Counsel, its attorney, pursuant to Rule 2-341 and Rules BV9 and BV16 of the Maryland Rules of Procedure, respectfully represents unto the Court:

1. Petitioner, by reference, incorporates as if fully set forth herein, all of the allegations contained in the Petition to Suspend Attorney from the Practice of Law filed hereinbefore.

2. Respondent was suspended from the practice of law by Order of this Court on February 11, 1993.

3. Respondent has been barred by the passage of time from seeking any or further appellate review of his conviction.

4. Respondent was sentenced to serve eighteen (18) months and began serving his sentence on or about January 4, 1993.

5. On or about June 24, 1993, Respondent was released from incarceration and was to remain on probation until July 19, 1994.

6. The crimes of which the Respondent was convicted involved misconduct in violation of the following

Disciplinary Rules of the Code of Professional Responsibility then in effect:

DR 1-102 MISCONDUCT

(A) A lawyer shall not:

(1) Violate a Disciplinary Rule.

(2) Engage in illegal conduct involving moral turpitude.

(3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

(4) Engage in conduct that is prejudicial to the administration of justice.

(5) Engage in any other conduct that adversely reflects on his fitness to practice law.

WHEREFORE, Petitioner prays that this Honorable Court:

A. Take such disciplinary action against the Respondent as it deems appropriate;

B. Assess against the Respondent in the form of a money judgment, the reasonable costs of these proceedings both arising subsequent to the filing of these charges and necessarily incurred in investigating the same prior to the filing of said charges, and;

C. Take such other and further action as this Court may deem appropriate under the circumstances.

s/ KENDALL R. CALHOUN
KENDALL R. CALHOUN
ASST. BAR COUNSEL

Attorney Grievance Commission
of Maryland
100 Community Place
Suite 3301
Crownsville, Maryland 21032
Phone: (410) 514-7051 or
800-492-1660

Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of January, 1995, a copy of the foregoing Amended Petition for Disciplinary Action was mailed, postage pre-paid to the Honorable Lawrence R. Daniels, Circuit Court for Baltimore County, County Courts Building, 401 Bosley Avenue, Towson, Maryland 21204-0754 and Stuart Jay Robinson, Esquire, 24 East Pennsylvania Avenue, Bel Air, Maryland 21014, Respondent's counsel.

s/ KENDALL R. CALHOUN
KENDALL R. CALHOUN
Assistant Bar Counsel